

**REMARKS**

The Examiner's courteous telephone interview with the undersigned attorney, and attorney Vince Keil, on September 2, 2003 is appreciated. As indicated during the telephone interview, Applicant wishes to bring prosecution of this long-pending application to a favorable conclusion as soon as possible. To that end, claims 7-10, as well as claims 13-22 added in Amendment B filed February 10, 2003, have been canceled. Additionally, claim 1 has been amended to more specifically claim certain preferred embodiments of the present invention and further distinguish the cited references.

Accordingly, Applicant respectfully requests reconsideration and further examination of the present application.

**I. Status of the Claims****A. *Election of Species***

Applicant acknowledges that claim 4 stand withdrawn at this time, as being directed to non-elected subject matter. Additionally, consistent with this finding, Applicant respectfully submits that at least new claims 23-27 and 28-31 read on the elected species.

**B. *Claim Amendments***

Prior to this Amendment C, claims 1 through 22 were pending. In this Amendment, claims 1-6 and 12 have been amended, claims 7-10 and 13-22 have been canceled, and new claims 23-31 have been added. Accordingly, claims 1-6, 11, 12 and 23-31 are now pending.

Claim 1 has been amended for purposes of clarification and to more specifically claim certain preferred embodiments of the present invention. Claim 1 is directed to an aqueous herbicidal composition comprising a glyphosate-based component selected from N-(phosphonomethyl)glycine and salts thereof, at a concentration of about 0.08 to 2.0 percent by weight of a ready-to-use composition, and a saponified or non-saponified fatty acid-based active ingredient. As amended, the fatty acid-based active

ingredient is present at a concentration of about 0.5 to less than 3.0 percent by weight of a ready-to-use composition and comprises a mixture of pelargonic acid, capric acid and lauric acid or salts thereof.

Support for the requirement in claim 1 of a glyphosate-based component selected from N-(phosphonomethyl)glycine and salts thereof may be found, for example, at page 4, line 17-19; and page 9, lines 8-16 of the specification. Support for the requirement in claim 1 that the fatty acid-based active ingredient be present at a concentration of less than 3.0 percent by weight may be found, for example, at page 10, lines 9-10 of the specification. Support for the requirement in claim 1 of a fatty acid-based active ingredient comprising a mixture of pelargonic acid, capric acid and lauric acid or salts thereof, may be found, for example, at page 5, lines 6-14 and lines 15-17; page 6, lines 2-5, lines 6-14 and lines 17-22; and Formulation A described at the bottom of Table I on page 13 of the specification.

Dependent claims 2-6 and 12 have been amended to be consistent with claim 1 as amended. New dependent claim 23, which depends from claim 3, is supported by claim 3, as previously presented.

New claim 24 is directed to an aqueous herbicidal composition comprising a glyphosate-based component selected from N-(phosphonomethyl)glycine and salts thereof, at a concentration of about 0.08 to 2.0 percent by weight of a ready-to-use composition, and a saponified or non-saponified fatty acid-based active ingredient. The fatty acid-based active ingredient is present at a concentration of about 0.5 to less than 3.0 percent by weight of a ready-to-use composition and comprises a mixture of pelargonic acid, capric acid and caprylic acid or salts thereof.

Support for new claim 24 may be found in claims 1 and 3, as previously presented, as well as, for example, at page 5, lines 6-11. Additionally, support for the limitation in claim 24 that the fatty acid-based active ingredient be present at a concentration of less than 3.0 percent by weight may be found, for example, at page 10, lines 9-10 of the specification.

Support for new claims 25-31 may be found in claims 2, 3, 23, 4, 5, 6 and 11, respectively, as previously presented and as currently amended herein.

**II. Objection under 37 C.F.R. 1.75(c)**

Applicant respectfully submits that dependent claim 2 has been amended in a manner which cannot imply that the claimed composition does not include the fatty acid-based active ingredient called for in claim 1. Claim 2 now clearly requires that the glyphosate-based component (and not the composition) comprises the isopropylamine salt of N-(phosphonomethyl)glycine. Accordingly, reconsideration of this objection is respectfully requested.

Claim 14 has been canceled, thus obviating the objection to this claim.

**III. Rejection under 35 U.S.C. §112, first paragraph**

Claims 13-22 have been canceled, thus obviating the rejection of these claims under 35 U.S.C. §112, first paragraph.

**IV. Allowable Subject Matter**

Applicant respectfully acknowledges the Office's finding on page 7 of the Office action that claim 12 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 12 requires, *inter alia*, that the fatty acid-based active ingredient comprise a mixture of salts of pelargonic acid, capric acid and lauric acid.

**V. Rejection under 35 U.S.C. §103(a)**

Reconsideration is respectfully requested of the rejection of claims 1-3, 5, 6 and 11 under 35 U.S.C. §103(a) as being unpatentable over the combined teachings of Wells (Plant Protection Quarterly, '89), Franz (U.S. Patent No. 3,977,860), Franz (*The Herbicide Glyphosate*, '85), and Puritch et al. (PCT Publication No. WO 89/03178) in view of Sampson (U.S. Patent No. 4,436,547) and Kuchikata et al. (PCT Publication No. WO 90/07275).

As discussed with the Examiner in the above-mentioned telephone interview, in order to expedite a favorable conclusion to the prosecution of this application, claim 1

has been amended to more specifically define the fatty acid-based active ingredient. More specifically, claim 1 as amended requires that the saponified or non-saponified fatty acid-based active ingredient combined with the glyphosate-based component in the aqueous herbicidal composition comprise a mixture of pelargonic acid, capric acid and lauric acid or salts thereof.

One of the requirements for establishing a *prima facie* case of obviousness is that the prior art references must teach or suggest each and every claim limitation. Applicant respectfully submits that no reference teaches or suggests a composition which comprises a fatty acid-based active ingredient comprising a mixture of pelargonic acid, capric acid and lauric acid or salts thereof such that a *prima facie* case of obviousness is lacking with respect to claim 1. Specifically, as previously noted in Amendment B<sup>1</sup>:

1. Wells teaches a series of compositions, each of which comprises glyphosate and an adjuvant of some kind. Although one of the adjuvants, "Activator 90," does contain free fatty acids, it does not contain a mixture of pelargonic acid, capric acid and lauric acid or salts thereof.<sup>2</sup>
2. Franz (U.S. Patent No. 3,977,860) makes no reference to fatty acids.
3. Franz (*The Herbicide Glyphosate*) likewise fails to make reference to fatty acids.
4. Sampson, although making reference to the use of fatty acids, makes no specific reference to a mixture of pelargonic acid, capric acid and lauric

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<sup>1</sup> In the interests of brevity, the entire contents of Amendment B will not be reproduced herein. However, it is to be noted that Applicant specifically maintains the position that motivation to combine Puritch with the other references cited in the Office action is lacking and, as such, a *prima facie* showing of obviousness is lacking for this additional reason.

<sup>2</sup> As noted in Exhibit B (i.e., the Declaration of Patrick J. McGinnity), which was attached to Amendment B, the fatty acids present in Activator 90 are C<sub>16</sub>-C<sub>20</sub> fatty acids. Pelargonic acid is a C<sub>9</sub> fatty acid, capric acid is a C<sub>10</sub> fatty acid, lauric acid is a C<sub>12</sub> fatty acid and caprylic acid is a C<sub>8</sub> fatty acid.

acid or salts thereof. Accordingly, the claimed combination is not taught or suggested by this reference.

5. Kuchikata et al. teach the preparation of a dry formulation of glyphosate with a liquid surfactant, which may be a fatty acid. However, they fail to teach a mixture of pelargonic acid, capric acid and lauric acid or salts thereof. Accordingly, the claimed combination is not taught or suggested by this reference.
6. Finally, the Puritch et al. reference discloses a herbicidal composition which combines one or more straight-chained alpha monocarboxylic acids comprising 6 to 18 carbon atoms or salts thereof with one or more ammonium compounds. Fatty acids having nine or ten carbon atoms are preferred over fatty acids having eight, eleven or twelve carbon atoms. In each of the Examples, a 50:50 mixture of ammonium nonanoate (ammonium salt of pelargonic acid) and ammonium decanoate (ammonium salt of capric acid) referred to as HS was employed. No reference is made to the use of a mixture of pelargonic acid, capric acid and lauric acid or salts thereof. Furthermore, in view of the teaching that fatty acids having twelve carbon atoms are less preferred, one skilled in the art would have no reason to include lauric acid in the composition. Accordingly, the claimed combination is not taught or suggested by this reference.

In view of the foregoing, Applicant respectfully submits that a *prima facie* case of obviousness is lacking with respect to the invention defined in claim 1 because the cited references fail to teach or suggest all of the claimed limitations. Claims 2-6, 11 and 12 which depend directly or indirectly from claim 1, are likewise submitted as patentable over the references cited in the Office action.

Claims 13-22 have been canceled, thus obviating the rejection of these claims under U.S.C. §103(a).

Finally, also in view of the foregoing, Applicant respectfully submits no reference teaches or suggests a composition which comprises a fatty acid-based active ingredient

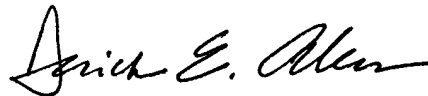
comprising a mixture of pelargonic acid, capric acid and caprylic acid or salts thereof, such that a *prima facie* case of obviousness is lacking with respect to claim 24, and the claims depending therefrom, as well.

**CONCLUSION**

In view of the foregoing, favorable reconsideration and allowance of all pending claims is respectfully requested.

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 19-1345.

Respectfully submitted,



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